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9 **UNITED STATES BANKRUPTCY COURT**
NORTHERN DISTRICT OF CALIFORNIA

10 In re:

11 RAJPAL SINGH BHULLAR,
12
13 Debtor.

Case No. 10-61905 CN

Chapter 11

Date: April 7, 2011
Time: 11:00 a.m.
Place: Courtroom 3070

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15
16 **MOTION BY UNITED STATES TRUSTEE TO CONVERT CASE TO CHAPTER 7**
PURSUANT TO 11 U.S.C. § 1112(b)

17
18 PLEASE TAKE NOTICE that at the date and time specified above, at the United
19 States Bankruptcy Court, 280 S. First Street, San Jose CA 95113, the United States
20 Trustee (the "UST") will, and hereby does, move the Court for the entry of an order to
21 convert the above-captioned case to a Chapter 7 case pursuant to 11 U.S.C. Section
22 1112(b).

23 In support of this motion the UST asks the Court to take judicial notice of its own
24 records in this case. Fed. R. Evid. 201, made applicable to bankruptcy proceedings
25 pursuant to Fed. R. Bankr. P. 9017. The declarations of Patricia M. Vargas ("Vargas
26 Decl."), Emily S. Keller ("Keller Decl.") and Brian M. Martinson ("Martinson Decl.") in
27 support of this motion are filed herewith.

28 The UST brings this motion to dismiss Rajpal Singh Bhullar's (the "Debtor") Chapter

Motion By United States Trustee To
Convert Chapter 11 Case To Chapter 7

11 case on the following grounds:

- the Debtor has failed to file cash collateral motions or stipulations with the lenders;
- the Debtor has failed to file timely, accurate and complete Monthly Operating Reports ("MORs"), thereby making it impossible for the UST, the Court and creditors to monitor the Debtor's performance while in bankruptcy, or to determine whether the Debtor has used cash collateral;
- the Debtor has failed to timely provide documents and file necessary amendments reasonably requested by the UST;
- the Debtor has failed to pay quarterly fees in accordance with 28 U.S.C. § 1930;
- the Debtor's actions (and inactions) to date demonstrate a disregard for the bankruptcy process and an inability to successfully reorganize;

This conduct constitutes cause for conversion.

I. FACTS

1. The Debtor filed for Chapter 11 protection on November 17, 2010, a little over a month after Judge Efremsky dismissed his previous Chapter 11 case (10-54935) pursuant to a stipulation between the Debtor and the UST. The case had serious administrative problems: monthly operating reports were filed several months late, on the day before a status conference hearing; no cash collateral motions had been filed; and certain documents requested by the UST such as bank statements, tax return, and proof of insurance for real properties were never provided to the UST. Keller Decl., ¶ 2.

2. Like the first case, the Debtor's current case has administrative problems.

3. The Debtor has not paid quarterly fees for the fourth quarter of 2010. Vargas Decl., ¶ 4. The actual amount owed is unknown because the Debtor has not filed any monthly operating reports. See *id.*, ¶¶ 3-4.

4. The Debtor has not filed a single monthly operating report. Reports for November, 2010; December, 2010; and January, 2011 are past due. Without timely,

1 complete and accurate MORs, the UST, creditors, and the Court are unable to verify
2 whether the Debtor is making any progress toward reorganization, and cannot keep
3 track of the Debtor's cash. Further, the UST is unable to accurately calculate the
4 amount of quarterly fees owed by the Debtor.

5 5. The Debtor has not filed cash collateral motions or stipulations for use of
6 cash collateral. The Debtor's primary source of income is from his real properties. See
7 Schedule I. Debtor's counsel, Patrick Calhoun of Sagaria Law ("Counsel"), represented
8 to the Court at the January 6, 2011 status conference that cash collateral motions
9 would be filed "in the next seven days"; i.e., by January 13, 2011. Keller Decl., ¶ 4.
10 Since then, at least one secured creditor, M.G. Santos has filed a notice of non-
11 consent to use of cash collateral.

12 6. Because the Debtor has not filed any monthly operating reports, the UST
13 cannot determine whether the Debtor has improperly used cash collateral. However,
14 the Debtor's non-mortgage personal expenses of \$3,340 exceed the \$2,000 non-cash
15 collateral salary he receives each month. See Schedules I and J.

16 7. The Debtor has not provided documents or filed amendments requested by
17 the UST. On November 18, 2010, the UST sent a letter to counsel for the Debtor
18 regarding the Initial Debtor Interview ("IDI"). The letter included a written request for
19 documents to be provided to the UST prior to the IDI. Martinson Decl., ¶ 2.

20 8. At the conclusion of the IDI, the UST created a list of requested items to be
21 provided to the UST and requested necessary amendments to be filed with the Court.
22 (the "IDI Checklist"). The UST established December 22, 2010 as the due date for the
23 requested items to be provided and filed; this due date was specified in the IDI
24 Checklist. Martinson Decl., ¶ 4. The Debtor and Debtor's counsel signed the IDI
25 Checklist, thus acknowledging the due date of the requested items. Martinson Decl., ¶
26 5.

27 9. At the Debtor's status conference hearing on January 6, 2010, Counsel
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1 represented to the Court that the documents and amendments requested by the UST
2 would be provided and filed by January 12, 2011. This was the date of the Debtor's
3 continued section 341 meeting. Keller Decl., ¶ 5. Neither Counsel nor the Debtor
4 appeared at the continued section 341 meeting on January 12, 2011, nor did they
5 provide the requested documents or file the requested amendments. *Id.*

6 10. As of the date of this motion, the Debtor has failed to provide all requested
7 items including an amended Schedule A to delete the Sanger property;¹ amended
8 Schedule B to report bank balances, US Bank accounts, \$3,500 of rents receivable and
9 value for entity AJIT; amended Schedule F to report dates of debts; amended
10 schedules D and F to properly indicated the status of creditors of the Sanger property;
11 amended SOFA item number 10 to report the transfer of the Sanger property to
12 Debtor's LLC and subsequent sale of the Sanger property; and copies of note and
13 sales documentation regarding the Sanger property. Martinson Decl., ¶ 6.

14 11. On Friday, January 28, 2011, a UST representative emailed Dominique
15 Sopko of Sagaria Law, who is listed as counsel of record on the bankruptcy docket in
16 this case, notifying her that the UST would file a motion to dismiss or convert the case if
17 issues with monthly operating reports, cash collateral, amendments and requested
18 documents were not addressed. Keller Decl., ¶ 6. Ms. Sopko acknowledged receipt of
19 the email on the same day. *Id.* The UST has not received any further communication
20 from anyone at Sagaria Law regarding this Chapter 11 case since then. *Id.*

21 12. Because the Debtor has not filed any MORs, has not provided the
22 requested documents or filed requested amendments, the UST cannot determine the
23 true state of the Debtor's financial affairs, and the public record in this case is not
24 complete and accurate.

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27 ¹ The Sanger property was sold pre-petition, during the month between the Debtor's
28 two bankruptcy cases.

II. DISCUSSION

A bankruptcy court has the authority to order that a Chapter 11 case be converted or dismissed if cause is shown and if the court finds that conversion or dismissal is in the best interest of creditors of the estate. Specifically, § 1112(b) provides:

. . . [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1) (Thomson Reuters/West 2011).

Section 1112(b)(4) of the Bankruptcy Code enumerates circumstances that constitute cause including:

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(B) gross mismanagement of the estate;

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors; . . .

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter; . . .

(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee;

(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order of relief;

(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by the court;

(K) failure to pay any fees or charges required under chapter 123 of title 28; . . .

(M) inability to effectuate substantial consummation of a confirmed plan..."

11 U.S.C. § 1112(b)(4).

The factors enumerated in 11 U.S.C. § 1112(b) are not exhaustive, and a court is

1 permitted to "consider other factors as they arise, and to use its equitable powers to reach
2 an appropriate result in individual cases." *In re Consolidated Pioneer Mortg. Entities*, 248
3 B.R. 368, 375 (9th Cir. BAP 2000) (citation omitted).

4 Once the moving party has shown cause for conversion or dismissal, the burden
5 shifts to the debtor to demonstrate the existence of unusual circumstances. See 11 U.S.C.
6 § 1112(b)(2) amended by Bankruptcy Technical Corrections Act of 2010, Pub. L. No.
7 111-327, 124 Stat. 3557 (2010).

8 For the following reasons, the UST respectfully asserts that cause exists to dismiss
9 or convert this case to Chapter 7 and that conversion is in the best interest of creditors and
10 this estate.

11 1. The Debtor Has Failed to File Complete and Accurate MORs in a Timely
12 Fashion.

13 A debtor-in-possession has a duty to file MORs. See, 11 U.S.C. §§ 704(a)(8) and
14 1107(a). Bankruptcy Local Rule 2015-2 requires a Chapter 11 debtor to file the MORs no
15 later than the 21st day of the month following the month to which the report pertains.
16 Separate reports must be filed (and served on the UST) for each calendar month during
17 which the case is pending, up to the time when the case is either converted or dismissed,
18 or a plan is confirmed. B.L.R. 2015-2. The MORs should be accompanied by the debtor's
19 bank statements and check registers for the applicable period. The purpose of the MORs
20 is to aid the court, the UST, and creditors in monitoring the debtor's performance in the
21 bankruptcy case and to allow all parties to take action if the debtor's situation worsens
22 while in bankruptcy. Unexcused failure to satisfy timely any Chapter 11 filing or reporting
23 requirement provides cause for dismissal or conversion under 11 U.S.C. § 1112(b)(4)(F).

24 Here, the Debtor has not filed a single MOR in this bankruptcy case.

25 The Court, creditors and the UST are prejudiced by a debtor's failure to file timely
26 and accurate MORs, because they have no way of knowing about the true state of a
27 debtor's post-petition operations and the likelihood of any return to creditors, and whether
28 the estate is being depleted or post-petition obligations are being increased. The UST is

1 unable to monitor post-petition borrowing, post-petition payments of pre-petition debt, or
2 evaluate whether a debtor has sufficient income or cash flow from operations to fund a
3 successful plan of reorganization. In addition, without MORs it is impossible to determine
4 whether a debtor has defaulted on statutory quarterly UST fees.

5 Furthermore, the UST, the Court and creditors cannot monitor whether the Debtor
6 is using cash collateral without authorization. The Debtor has not filed any cash collateral
7 motions, although at the January 6, 2011 status conference, Counsel informed the Court
8 and the UST that the motions would be filed "within seven days"; i.e., by January 13, 2011.
9 Neither have any cash collateral stipulations been filed. The Debtor's personal expenses
10 exceed his non-cash collateral income by over \$1,000 per month. So, there is a high risk
11 that the Debtor is dipping into cash collateral funds without authorization. Without MORs
12 the UST, the Court, and creditors cannot verify that cash collateral funds have been
13 segregated and are not being used improperly.

14 This Debtor has failed to comply with one of the most fundamental responsibilities
15 of a debtor-in-possession by failing to timely file MORs. This constitutes cause to convert
16 this case to Chapter 7. 11 U.S.C. § 1112(b)(4)(F); see *In re Tucker*, 411 B.R. 530 (Bankr.
17 S.D. Ga. 2009) (finding that debtor's inability to timely file operating reports "evidences
18 'habitual noncompliance [which] calls in to question a debtor's ability to effectively
19 reorganize.'" (quoting *In re 210 West Liberty Holdings, LLC*, 2009 WL 1522047 at *7
20 (Bankr. N.D. W.Va. 2009)).

21 2. The Debtor Has Failed to Timely Provide Information Reasonably Requested
22 by the UST.

23 A debtor-in-possession is obligated to provide information regarding the estate and
24 the estate's administration to interested parties upon request. See 11 U.S.C. §§ 704(a)(7)
25 and 1107(a). A debtor's failure to timely provide information reasonably requested by the
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1 UST constitutes grounds for dismissal or conversion.² 11 U.S.C. § 1112(b)(4)(H). The
2 UST asserts that a debtor's failure to timely file necessary amendments requested by the
3 UST also constitutes grounds for dismissal or conversion. *See In re Consolidated Pioneer*
4 *Mortg. Entities*, 248 B.R. 368, 375 (9th Cir. BAP 2000), *affd.* 264 F.3d 803 (9th Cir. 2001)
5 (The factors enumerated under "cause" in section 1112(b) are not exhaustive, and a "court
6 will be able to consider other factors as they arise, and to use its equitable powers to reach
7 an appropriate result in individual cases.") (citation omitted).

8 Here, the Debtor has failed to provide the UST with material information reasonably
9 requested by the UST; i.e., documentation of the sale of one of the Debtor's properties
10 which took place during the month between his two bankruptcy cases. Furthermore, the
11 Debtor has failed to file the necessary amendments to the schedules and Statement of
12 Financial Affairs to accurately report the his assets and liabilities, as reasonably requested
13 by the UST.

14 The Debtor's failure to provide reasonably requested information and file requested
15 necessary amendments constitutes cause for conversion under 11 U.S.C. § 1112(b)(4)(H).

16 3. The Debtor Has Failed to Pay UST Quarterly Fees as Required Under
17 28 U.S.C. § 1930(a)(6).

18 Pursuant to Chapter 123 of title 28 of the Judicial Code, a Chapter 11 debtor must
19 pay a quarterly fee to the United States trustee "for each quarter (including any fraction
20 thereof) until the case is converted or dismissed, whichever occurs first." 28 U.S.C. §
21 1930(a)(6) (West 2009). The fee "shall be payable on the last day of the calendar month
22 following the calendar quarter for which the fee is owed. *Id.* Failure to pay the required
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25 Under 28 U.S.C. § 586(a)(3), the UST is given the duty to "supervise the administration
26 of cases and trustees ... under chapter 11" and to take such action as the UST deems
27 appropriate to "prevent undue delay" in the progress of a Chapter 11 case. *Id.* The UST
28 is therefore a party in interest. *See also* section 307 ("The United States Trustee may
raise and appear and be heard on any issue in any case or proceeding under [title 11].
..") 11 U.S.C. § 307 (Thomson Reuters/West 2011).

1 quarterly fees constitutes cause for dismissal or conversion of the Chapter 11 case.
2 11 U.S.C. § 1112(b)(4)(K).

3 Here, the Debtor's quarterly fees for the fourth quarter became due on January 31,
4 2011, but no quarterly fees have been paid. Because the Debtor has not filed any MORs,
5 the actual amount due cannot be determined, and may be higher than the minimum
6 quarterly fee of \$325. The Debtor's failure to pay quarterly fees demonstrates the Debtor's
7 inability or unwillingness to comply with the requirements of this Court and the Bankruptcy
8 Code, providing independent cause for this Court to convert the case to Chapter 7.
9 11 U.S.C. § 1112(b)(4)(K); see, *In re Tucker*, 411 B.R. 530, 535 (Bankr. S.D. Ga. 2009)
10 (a debtor's "habitual noncompliance calls in to question a debtor's ability to effectively
11 reorganize.") (quoting *In re 210 West Liberty Holdings, LLC*, 2009 WL 1522047 at *7
12 (Bankr. N.D. W.Va. 2009)).

13 III. CONCLUSION

14 The Debtor's non-compliance with the administrative requirements of a Chapter 11
15 debtor-in-possession in this case and in his previous case exemplifies an unwillingness or
16 inability to perform the duties required of a debtor-in-possession, and a disregard for the
17 bankruptcy system from which the Debtor seeks protection. Based on the foregoing, the
18 UST requests that the Court convert this case to Chapter 7, or for such other relief as the
19 Court deems just and proper.

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21 Dated: February 24, 2011

Respectfully submitted,

22
23 By: /s/ Emily S. Keller

24 Emily S. Keller
25 Attorney for United States Trustee
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